



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

JAN 13 2000

MEMORANDUM

SUBJECT: Florida Brownfields Memorandum of Agreement

FROM: Jim McGuire, Chief
South Florida Section

TO: Karin Koslow, OECA
Nancy Wilson, OSWER
Jan Rogers, S. Fl. Office
Simon Miller, EAD

Attached is the signed Brownfields Memorandum of Agreement (MOA) between EPA Region 4 and the Florida Department of Environmental Protection (FDEP). The MOA was executed by the State on December 2, 1999. Hopefully, the finalization of the attached MOA will enhance FDEP's efforts to expedite the assessment and cleanup of contaminated property meeting the eligibility requirements contained in this MOA and return such property to productive use.

Thanks again to all those who helped bring discussions on the MOA to closure. If you have any questions on this MOA, please contact me at (404) 562-8911.

Attachment

cc: Herbert Petitjean, KY DEP

**SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4**

I. PURPOSE OF AGREEMENT

The purpose of this Superfund Memorandum of Agreement ("SMOA") is to coordinate the roles and responsibilities of the U.S. Environmental Protection Agency ("EPA"), Region 4 and the Florida Department of Environmental Protection ("FDEP") with respect to cleanup of hazardous substances conducted under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") and Florida's Brownfields Redevelopment Act as established in Sections 376.77 - 85, Florida Statutes (F.S.), (the "Florida Brownfields Redevelopment Act"). This SMOA defines those roles and responsibilities with respect to the sites set forth on the List of Covered Sites, ("Exhibit A") attached hereto.

II. BACKGROUND TO AGREEMENT

EPA Region 4 and FDEP believe that the revitalization of abandoned, idled, or under-used industrial or commercial facilities where expansion or redevelopment is complicated by real or perceived contamination (commonly known as "Brownfields") will provide a significant benefit both to the environment and to local communities. As part of its Brownfields Action Agenda, EPA has committed to working with states to define appropriate federal and state roles with respect to site assessments and cleanups at Brownfield sites. EPA Region 4's and Florida's overall goals are to encourage the reuse of Brownfields, and to protect public health and the environment of communities in which such properties are located by expediting assessment and cleanup of the properties, and to provide the opportunity for economic benefit to those communities.

By entering into this agreement, EPA Region 4 and FDEP seek to expedite the assessment and cleanup of contaminated property in Florida, and to facilitate the return of such property to productive use. EPA Region 4 believes that state programs, such as the program set forth in the Florida Brownfields Redevelopment Act, will reduce the need for federal involvement at many contaminated sites. Both agencies recognize that to meet this goal EPA Region 4 and FDEP should:

- exercise their authorities and use their resources as efficiently as possible;
- promote appropriate investigations and cleanups by parties voluntarily participating in Brownfield site cleanups pursuant to Section 376.82, F.S., of the Florida Brownfields Redevelopment Act, the Florida Brownfields Cleanup Criteria ("Chapter 62-785, Florida Administrative Code", (F.A.C.)), and a brownfield site rehabilitation agreement ("BSRA"); and
- develop partnerships among EPA Region 4, the State of Florida ("State"), other state and local governmental agencies, and key external stakeholders in the State, including representatives from citizen and community groups and the private sector.

III. SCOPE OF AGREEMENT

The scope of this agreement extends to those sites, regardless of their status in the Comprehensive Environmental Response, Compensation and Liability Information System

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(CERCLIS), where redevelopment and rehabilitation efforts may be hindered, in part, by CERCLA liability issues. A site is eligible to be covered by this agreement if the site meets all of the following criteria:

- A. The site has been designated as a Florida Brownfield Area and a BSRA has been executed for the site; and
- B. The site is listed in CERCLIS and is not a high priority for further CERCLA action following an EPA-approved Preliminary Assessment or Site Investigation (Exhibit B and Appendix B). If no priority has been assigned, EPA Region 4 will evaluate the site and assign a priority level prior to determining whether the site is eligible for coverage; or
The site is not an appropriate candidate for the CERCLIS Inventory pursuant to FDEP's CERCLA prescreening / site discovery checklist (Appendix C); or
The site is a non-CERCLIS site which EPA Region 4 and FDEP have determined could be addressed more effectively through the Florida Brownfields Redevelopment Act than the CERCLA process as long as the site meets the criteria set forth in paragraphs A, C, D, E, and F herein; and
- C. The site has not had a Hazard Ranking System (HRS) package submitted to EPA Headquarters or the site has not been proposed for, or listed on, the National Priorities List; and
- D. The site is not a site at which EPA Region 4 is planning to initiate or has initiated a response action or at which a private party is required to conduct cleanup pursuant to a Unilateral Administrative Order issued pursuant to Section 106 of CERCLA or pursuant to a consent decree or consent agreement under Section 122 of CERCLA or where EPA Region 4 is planning to initiate or has initiated corrective action pursuant to Sections 3013, 7003 or 3008(a) of the Resource Conservation and Recovery Act (RCRA); and
- E. The site is not a federal facility governed by Section 120 of CERCLA; and
- F. The site is not a site that contains a facility which is a permitted facility or an interim status facility as defined by Section 3005 of RCRA and/or is not a facility undergoing, or potentially subject to, corrective action pursuant to Sections 3004(u), 3004 (v) or 3008 (h) of RCRA.

Only sites meeting all of the above criteria are eligible to be considered for coverage. Of those sites that are eligible, only those that have been mutually agreed upon by FDEP and EPA Region 4 as shown on Exhibit A shall be subject this SMOA.

IV. PRINCIPLES OF AGREEMENT

- A. EPA Region 4 has determined that the Florida Brownfields Redevelopment Act provides meaningful community involvement in rehabilitation and redevelopment of brownfields sites. The Florida Brownfields Redevelopment Act requires public notification and participation in the rehabilitation process as follows:
 1. A local advisory committee must be established in accordance with Section 376.80(4), F.S., of the Brownfields Redevelopment Act. When such a committee is established, the local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish such advisory committee for the purpose of improving

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public participation and receiving public comments on rehabilitation and redevelopment of a brownfield area, future land use, local employment opportunities, community safety, and environmental justice. The advisory committee must review and provide recommendations on the proposed BSRA; and

2. When establishing a temporary point of compliance for groundwater beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume provided human health, public safety, and the environment are protected, public notification and participation shall be required as follows. Temporary extension of the point of compliance beyond the property boundary, provided in Section 376.81(1)(b), F.S., of the Brownfields Redevelopment Act must include actual notice by the person responsible for brownfield site rehabilitation ("PRFBSR") to local governments and the owners of the property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice shall have an opportunity to comment within 30 days of receipt of the notice. The notice shall be published in accordance with the requirements of Rule 62-785.690, F.A.C., of the Brownfields Cleanup Criteria Rule.

When a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zones, empowerment zones, closed military bases, or an EPA designated brownfield pilot project area, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant public concerns. Notice of the public hearing must be in accordance with Section 376.80(2)(a), F.S., of the Brownfields Redevelopment Act;

- B. EPA Region 4 has determined that response actions taken by FDEP will be protective of human health and the environment. The rehabilitation objective will be based on the FDEP's Chapter 62-785, F.A.C., the Brownfields Cleanup Criteria Rule.
- C. EPA Region 4 has determined that FDEP has adequate resources to ensure that the voluntary response actions performed to cleanup/rehabilitate the sites listed on Exhibit A are performed in an appropriate and timely manner and that technical assistance and streamlined procedures are available, where appropriate, from FDEP.
- D. EPA Region 4 has determined that Chapter 62-785, F.A.C., provides a mechanism for written approval of PRFBSRs' Remedial Action Plans and other related rehabilitation documents, and provides a mechanism for written certification to PRFBSRs engaged in voluntary cleanup activities pursuant to the Brownfields Redevelopment Act that response actions have been satisfactorily completed (No Further Action Letters). The FDEP agrees to provide copies of a schedule for the cleanup/rehabilitation and copies of all No Further Action Letters with respect to the sites listed on Exhibit A to EPA Region 4 in a timely manner.
- E. EPA Region 4 has determined that FDEP will provide adequate oversight of voluntary parties conducting cleanups at sites listed on Exhibit A to ensure that the response actions are conducted in accordance with Chapter 62-785, F.A.C., are conducted in a timely manner, and are protective of human health and the environment.

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- F. Based on a review of relevant Florida statutes, EPA Region 4 has determined that FDEP is capable by enforcement actions against the responsible parties, or by state-funded cleanups, of ensuring completion of cleanup if the PRFBSR fails or refuses to do so.
- G. The FDEP will, in the event the PRFBSR fails to comply with the BSRA, allow 90 days for the PRFBSR to return to compliance with the provision at issue or to negotiate a modification to the BSRA with the FDEP for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the BSRA and a modification cannot be negotiated within the 90-day grace period, the immunity provisions of the Brownfields Redevelopment Act are revoked and the site will be removed from Exhibit A.
- H. Under F.S. 376.80 (11), FDEP is authorized to enter into delegation agreements with local pollution control programs to administer the state brownfields program within these local jurisdictions. Notwithstanding any such delegation agreement to local pollution control programs, the terms of this agreement shall remain the obligations of FDEP as to any sites on Exhibit A.

of Rule V. EPA REGION 4's COMMITMENTS

- A. Although this SMOA does not constitute a release from liability under CERCLA, generally EPA Region 4 does not anticipate taking removal or remedial action pursuant to CERCLA at any sites listed on Exhibit A unless EPA Region 4, after consultation with the FDEP, determines that:
 - 1. The PRFBSR has undertaken actions at the site that have exacerbated the existing contamination problem or has undertaken actions at the site that have caused a new contamination problem and has failed to abate the exacerbated problem in accordance with the terms of the BSRA; or
 - 2. The site may present an imminent and substantial endangerment to human health or welfare or the environment and federal action is warranted; or
 - 3. The PRFBSR fails or refuses to complete the necessary cleanup in a competent or timely manner in accordance with its BSRA, and FDEP is unable to or refuses to ensure completion of response actions.
- B. Upon agreement of listing a site by FDEP and EPA Region 4 on Exhibit A, EPA Region 4 will indicate on CERCLIS that the site is the subject of voluntary remediation pursuant to Chapter 62-785, F.A.C., and EPA Region 4 currently plans no removal or remedial action, except under the limited circumstances set forth in Paragraph A. above.
- C. Following FDEP's determination of compliance with the BSRA by issuance of a Site Rehabilitation Completion Order and upon the request of FDEP, EPA Region 4 will issue Comfort Letters to property owners or to PRFBSRs of such sites in accordance with EPA's Policy on the Issuance of Comfort/Status Letters (November 8, 1996). In addition, EPA Region 4 will update, as necessary, the CERCLIS Inventory by archiving the site to reflect compliance with the BSRA and, if requested, provide formal notification of this action to the property owner or to the PRFBSR in accordance with EPA's Policy on the Issuance of Comfort/Status Letters.

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D. For the purpose of EPA Region 4 issuing Comfort Letters at sites where Alternate Cleanup Target Levels (ACTLs) are proposed pursuant to Chapter 62-785, F.A.C.:

1. EPA Region 4 must concur with FDEP's approval of ACTLs at a covered site that is listed in CERCLIS (except "archived" sites) in order for a site remediated to such ACTLs to be eligible to receive a Comfort Letter from EPA upon compliance with the BSRA. When ACTLs are developed for such a covered site, the FDEP will provide EPA Region 4 a summary of the basis for the ACTLs. EPA Region 4 will either concur or non-concur with the proposed ACTLs, or allow a default approval of the ACTLs by not commenting, within 15 days of receipt of the summary transmitted by the FDEP.

If EPA Region 4 non-concurs with the proposed ACTLs, the EPA Region 4 will allow the PRFBSR an opportunity to present the ACTL proposal to EPA Region 4 for further consideration. Such a presentation by the PRFBSR must be made within 15 days from the date of EPA's non-concurrence. Following the PRFBSR's presentation, if EPA Region 4 continues to not concur with the ACTL proposal, the site will be removed, following consultation with FDEP, from Exhibit A.

2. EPA Region 4 concurrence with proposed ACTLs for covered sites is not required for sites that prescored less than 28.5 as part of an EPA-approved Preliminary Assessment or that scored less than 28.5 after completion and EPA Region 4's acceptance of a Site Investigation, or that are listed in CERCLIS as "archived" unless the redevelopment plans introduce additional receptors.

VI. CONSULTATIONS BETWEEN THE STATE AND EPA REGION 4

A. The Project Managers for EPA Region 4 and FDEP will meet, no less than two times every calendar year to discuss the following matters related to this SMOA:

1. FDEP's assessment and supporting data, as necessary, on the progress of each site set forth on Exhibit A;
2. Any sites which either FDEP or EPA Region 4 wishes to delete from Exhibit A because the PRFBSR performing the cleanup/rehabilitation has not completed the cleanup/rehabilitation in a timely fashion or otherwise according to the requirements of this SMOA;
3. New sites proposed for cleanup by a PRFBSR pursuant to the Florida Brownfields Redevelopment Act which are eligible for listing on Exhibit A, under the terms of this SMOA;
4. Sites for which FDEP has issued No Further Action Letters set forth in Section IV.D. of this SMOA, which are eligible for archiving in CERCLIS as described in Paragraph V.B. above;
5. Any proposed legislation or regulations which would alter any BSRAs such that the Agreements would no longer meet the requirements of this SMOA;
6. Any proposed delegation agreements pursuant to Section 376.80 (11), F.S.;